

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

This document relates to: *Track Two Cases*

*Cabell County Commission v. AmerisourceBergen  
Drug Corporation, et al.*  
Case No. 1:17-op-45053

*City of Huntington, W.Va. v. Amerisource Bergen  
Drug Corp., et al.*  
Case No. 17-OP-45054

**MDL No. 2804**

**Case No. 17-md-2804**

**Judge Dan Aaron Polster**

**PLAINTIFFS CABELL COUNTY COMMISSION and  
CITY OF HUNTINGTON'S MOTION TO SEVER**

COME NOW Plaintiffs, CABELL COUNTY COMMISSION and CITY OF HUNTINGTON, by counsel, and comply with the *Order Regarding Track Two Cases* (Doc #: 2950) by requesting the Court sever all but the following defendants<sup>1</sup> from this civil action:

1. AmerisourceBergen Drug Corporation;
2. Cardinal Health, Inc.; and
3. McKesson Corporation.

Following severance, Plaintiffs intend to voluntarily dismiss all causes of action against the aforementioned defendants (“the Big 3”) other than common law public nuisance (Count I)

---

<sup>1</sup> Plaintiffs preserve their claims and causes of action against the severed defendants and seek to proceed against the same in a parallel track to CT1b.

(Doc. #2595). Plaintiffs intend to invoke the legal doctrine of civil conspiracy<sup>2</sup> which imposes statutory joint liability<sup>3</sup>. Plaintiffs intend to seek **only** money damages for the “elimination of hazards to public health and safety and to abate or cause to be abated ... a public nuisance.” W. Va. Code § 7-1-3kk; W. Va. Code § 8-12-5(23). Plaintiffs intend to seek punitive damages.<sup>4</sup> W. Va. Code § 55-7-29. Plaintiffs intend to resolve all pending discovery disputes and then seek immediate remand for a bifurcated bench trial as soon as possible.

Dated: December 13, 2019

Respectfully submitted,

THE CITY OF HUNTINGTON

CABELL COUNTY COMMISSION

/s/ Anne McGinness Kearse

Anne McGinness Kearse (WVSB No. 12547)

Joseph F. Rice

**MOTLEY RICE LLC**

28 Bridgeside Blvd.

Mount Pleasant, SC 29464

Tel: 843-216-9000

Fax: 843-216-9450

[akearse@motleyrice.com](mailto:akearse@motleyrice.com)

[jrice@motleyrice.com](mailto:jrice@motleyrice.com)

/s/ Paul T. Farrell, Jr.

Paul T. Farrell, Jr. (WVSB Bar No. 7443)

**GREENE, KETCHUM, FARRELL,**

**BAILEY & TWEEL, LLP**

419 - 11th Street (25701)/ P.O. Box 2389

Huntington, West Virginia 25724-2389

Tel.: 800-479-0053 or 304-525-9115

Fax: 304-529-3284

[paul@greeneketchum.com](mailto:paul@greeneketchum.com)

---

<sup>2</sup> A civil conspiracy is not a per se, stand-alone cause of action; it is instead a legal doctrine under which liability for a tort may be imposed on people who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s). *Dunn v. Rockwell*, 225 W. Va. 43, 689 S.E.2d 255, Syl. Pt. 9 (2009).

<sup>3</sup> Joint liability may be imposed on two or more defendants who “consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission.” W. Va. Code § 55-7-13c.

<sup>4</sup> An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. W. Va. Code § 55-7-29.

Linda Singer  
David I. Ackerman  
**MOTLEY RICE LLC**  
401 9th Street NW, Suite 1001  
Washington, DC 20004  
Tel: 202-232-5504  
Fax: 202-386-9622  
[lsinger@motleyrice.com](mailto:lsinger@motleyrice.com)  
[dackerman@motleyrice.com](mailto:dackerman@motleyrice.com)

Charles R. "Rusty" Webb (WVSB No. 4782)  
**THE WEBB LAW CENTRE, PLLC**  
716 Lee Street, East  
Charleston, West Virginia 25301  
Telephone: (304) 344-9322  
Facsimile: (304) 344-1157  
[rusty@rustywebb.com](mailto:rusty@rustywebb.com)

Michael A. Woelfel (W.Va. Bar ID 4106)  
**WOELFEL AND WOELFEL, LLP**  
801 Eighth Street  
Huntington, West Virginia 25701  
Tel. 304.522.6249  
Fax. 304.522.9282  
[mikewoelfel3@gmail.com](mailto:mikewoelfel3@gmail.com)

Anthony J. Majestro  
**POWELL & MAJESTRO, PLLC**  
405 Capitol Street, Suite P-1200  
Charleston, WV 25301  
Tel.: 304-346-2889  
Fax: 304-346-2895  
[amajestro@powellmajestro.com](mailto:amajestro@powellmajestro.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 13, 2019, a copy of the foregoing **PLAINTIFFS CABELL COUNTY COMMISSION and CITY OF HUNTINGTON'S MOTION TO SEVER** has been filed electronically using the Court's CM/ECF system and will be served *via* the Court's CM/ECF filing system, which will send notification of such filing to the attorneys of record at their e-mail addresses on file with the Court.

/s/ Paul T. Farrell, Jr.

Paul T. Farrell, Jr.